

SEP 28 2011

WALTER CARPENTER

\*

IN THE

Plaintiff

\*

UNITED STATES DISTRICT COURT

v.

\*

FOR THE

SERGEANT JOSEPH DONATO, et al.

\*

DISTRICT OF MARYLAND

Defendants

\*

NORTHERN DIVISION

\*

CIVIL ACTION No.: CCB-11-2782

\* \* \* \* \*

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, *et seq.*, Defendants, Sergeant Joseph M. Donato and Officer Ryan W. Hill (hereinafter "Defendants"), by their undersigned counsel, hereby move for the removal of this action to the United States District Court for the District of Maryland (Northern Division). As grounds for removal, Defendants state:

1. Plaintiff commenced this action on August 5, 2010 by filing a Complaint against the Defendants, the Mayor and City Council of Baltimore and the Baltimore Police Department in the Circuit Court for Baltimore City, Maryland. Plaintiff's Complaint was assigned Case No. 24-C-10-005728 (hereinafter, the "State Court Action"). On December 28, 2010, Plaintiff filed an initial Amended Complaint. On March 17, 2011, Plaintiff filed a Second Amended Complaint. On September 22, 2011, Plaintiff filed a Third Amended Complaint and a Motion for Leave to File Third Amended Complaint.
2. Defendants Donato and Hill have already been served in the State Court Action. However, the Third Amended Complaint names the Mayor and City Council of Baltimore and Frederick H. Bealefeld, III, Commissioner of the Baltimore Police

Department as new Defendants.<sup>1</sup> To undersigned counsel's knowledge, neither the Mayor and City Council of Baltimore nor Commissioner Bealefeld have been served with process as to the Third Amended Complaint. No further proceedings have occurred in the State Court Action. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 103.5(a), copies of all process, pleadings and orders served upon Defendants are attached hereto as Exhibit A.

3. This action is brought by Walter Carpenter for alleged violations of his civil rights. In his Third Amended Complaint, he alleges violations of 42 U.S.C. § 1983; the First and Fourteenth Amendments to the United States Constitution; violation of Articles 26 and 40 of the Maryland Declaration of Rights; Conversion; Invasion of Privacy; Assault and Battery; False Arrest; False Imprisonment; Malicious Prosecution; Intentional Infliction of Emotional Distress; Painting Plaintiff in a False and Misleading Light; and an alleged violation of "Article 24."
4. Pursuant to 28 U.S.C. § 1441(a), "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."
5. This matter is subject to removal pursuant to 28 U.S.C. § 1441(a) because, as set forth above, Plaintiff has alleged causes of action under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution, and thus his claims arise under the laws of the United States within the meaning of 28 U.S.C. § 1331.

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<sup>1</sup> Defendant Baltimore Police Department was dismissed from the State Court Action by a Court Order entered on April 18, 2011. The Third Amended Complaint renames the Baltimore Police Department as a Defendant.

6. Plaintiff also brings state constitutional and possibly common law claims, over which this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a). (Third Amended Complaint at Counts II, VII, VIII, IX, X, XI, XII, XIII, XIV.)<sup>2</sup>
7. This Court is the District Court of the United States for the district embracing the place where the State Court Action is pending.
8. This Notice of Removal is being filed within 30 days after Defendant received, through service or otherwise, a copy of Plaintiff's Third Amended Complaint and is, therefore, timely filed pursuant to 28 U.S.C. § 1446(b).
9. A Notice of Filing of Notice of Removal, attaching a copy of this Notice of Removal, is being filed on this date with the Clerk of the Circuit Court of Baltimore City, Maryland and served on Plaintiff as required by 28 U.S.C. § 1446(d). A copy (without attachments) of the Notice of Filing of Removal filed in the State Court Action is attached hereto as Exhibit B.

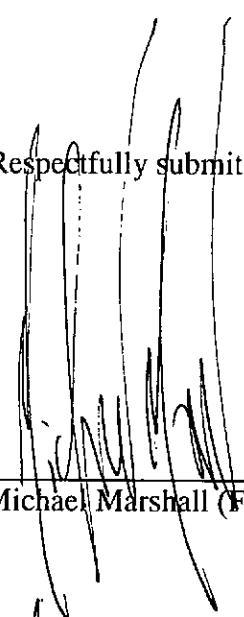
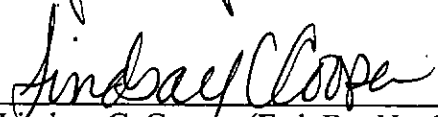
WHEREFORE, Defendants Sergeant Joseph M. Donato and Officer Ryan W. Hill respectfully request that this Notice of Removal be accepted and that the State Court Action be removed to the United States District Court for the District of Maryland.

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<sup>2</sup> Count VI, entitled, "Violation of Plaintiff's right guaranteed by Article 24 to be free from the deprivation of property without due process of law" is vague. Presumably the reference is to Article 24 of the Maryland Declaration of Rights.

Dated: September 27, 2011

Respectfully submitted,

  
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Michael Marshall (Fed. Bar No. 02587)  
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*Attorneys for Defendants Donato and Hill*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this <sup>28th</sup> 27<sup>th</sup> day of September, 2011, a copy of the foregoing Notice of Removal and exhibit were served, by facsimile and first-class mail, postage prepaid, upon Elan Rafael, Esq., Jason Silverstein, Esq. and Roland Walker, Esq., Court Square Building, 200 E. Lexington St., Suite 306, Baltimore, MD 21201, (410) 727-4955, Attorneys for Plaintiff.

  
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Lindsay C. Cooper